

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 847

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Ben Lujan

AN ACT

**RELATING TO CRIMINAL LAW; AMENDING THE ANTITERRORISM ACT;
AMENDING CERTAIN SECTIONS OF THE CRIMINAL CODE THAT RELATE TO
THEFT OF IDENTITY AND UNLAWFUL COMMUNICATIONS; DECLARING AN
EMERGENCY.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. Section 30-16-24.1 NMSA 1978 (being Laws 2001,
Chapter 138, Section 1) is amended to read:**

"30-16-24.1. THEFT OF IDENTITY. - -

**A. Theft of identity consists of willfully
obtaining, recording or transferring personal identifying
information of another person without the authorization or
consent of that person and with the intent to defraud that
person or another.**

B. As used in this section, "personal identifying

. 145574. 1

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 information" means information that alone or in conjunction
2 with other information identifies a person, including the
3 person's name, address, telephone number, driver's license
4 number, social security number, place of employment, maiden
5 name of the person's mother, demand deposit account number,
6 checking or savings account number, credit card or debit card
7 number, personal identification number, passwords or any other
8 numbers or information that can be used to access a person's
9 financial resources.

10 C. [~~Whoever~~] A person who commits theft of identity
11 is guilty of:

12 (1) a misdemeanor; or

13 (2) a second degree felony when the act is
14 committed with the intent to:

15 (a) commit or assist in the commission
16 of an act of terrorism as defined in Section 30-20A-2 NMSA
17 1978; or

18 (b) use or facilitate the use of a
19 weapon of mass destruction as defined in Section 30-20A-2 NMSA
20 1978.

21 D. Prosecution pursuant to this section shall not
22 prevent prosecution pursuant to any other provision of the law
23 when the conduct also constitutes a violation of that other
24 provision.

25 E. In a prosecution brought pursuant to this

. 145574. 1

underscored material = new
[bracketed material] = del etc

1 section, the theft of identity shall be considered to have been
2 committed in the county where the person whose identifying
3 information was appropriated resided at the time of the
4 offense, or in which any part of the offense took place,
5 regardless of whether the defendant was ever actually present
6 in the county.

7 F. A person found guilty of theft of identity
8 shall, in addition to any other punishment, be ordered to make
9 restitution for any financial loss sustained by a person
10 injured as the direct result of the theft of identity. In
11 addition to out-of-pocket costs, restitution may include
12 payment for costs, including attorney fees, incurred by that
13 person in clearing his credit history or credit rating or costs
14 incurred in connection with a civil or administrative
15 proceeding to satisfy a debt, lien, judgment or other
16 obligation of that person arising as a result of the theft of
17 identity.

18 G. The sentencing court shall issue written
19 findings of fact and may issue orders as are necessary to
20 correct a public record that contains false information as a
21 result of the theft of identity."

22 Section 2. Section 30-20-12 NMSA 1978 (being Laws 1967,
23 Chapter 120, Section 2) is amended to read:

24 "30-20-12. USE OF [TELEPHONE] ELECTRONIC OR WRITTEN
25 COMMUNICATION TO TERRIFY, INTIMIDATE, THREATEN OR HARASS [ANNOY

. 145574. 1

underscored material = new
[bracketed material] = delete

1 ~~OR OFFEND~~] - - PENALTY. - -

2 A. It [~~shall be~~] is unlawful for [~~any~~] a person,
3 with intent to terrify, intimidate, threaten or harass, [~~annoy~~
4 ~~or offend, to telephone another~~] to communicate with another by
5 electronic or written communication and use any obscene, lewd
6 or profane language or suggest any lewd, criminal or lascivious
7 act or threaten to inflict injury or physical harm to the
8 person or property of any person. It [~~shall~~] is also [~~be~~]
9 unlawful for [~~any~~] a person to attempt by [~~telephone~~]
10 electronic or written communication to extort money or other
11 thing of value from any other person, or to otherwise disturb
12 by repeated anonymous [~~telephone calls~~] electronic or written
13 communication the peace, quiet or right of privacy of any other
14 person at the place where the [~~telephone call or calls~~]
15 communications were received, or to maliciously [~~make a~~
16 ~~telephone call, whether or not conversation ensues~~] communicate
17 by electronic or written communication, whether or not a
18 response results, with intent to [~~annoy or~~] disturb another, or
19 to disrupt the [~~telecommunications~~] electronic or written
20 communications of another.

21 B. The use of obscene, lewd or profane language or
22 the making of a threat or statement as set forth in Subsection
23 A of this section shall be prima facie evidence of intent to
24 terrify, intimidate, threaten or harass [~~annoy or offend~~].

25 C. As used in this section:

. 145574. 1

underscored material = new
[bracketed material] = delete

1 (1) "electronic communication" means a
2 communication made through an electronic device or medium,
3 including a telephone, computer, fax machine, pager or similar
4 device; and

5 (2) "written communication" means a
6 communication made by delivery of a written document, including
7 communication by public or private mail, courier or similar
8 delivery service.

9 ~~[E.]~~ D. Any offense committed ~~[by use of a~~
10 ~~telephone as set forth]~~ in violation of this section shall be
11 deemed to have been committed at either the place where the
12 ~~[telephone call or calls]~~ communication originated or at the
13 place where the ~~[telephone call or calls were]~~ communication
14 was received.

15 ~~[D. Whosoever violates this section is guilty of a~~
16 ~~misdemeanor, unless such person has previously been convicted~~
17 ~~of such offense or of an offense under the laws of another~~
18 ~~state or of the United States which would have been an offense~~
19 ~~under this section if committed in this state, in which case~~
20 ~~such person is guilty of a fourth degree felony.]~~

21 E. Except as provided in Subsection F of this
22 section, a person who violates the provisions of this section
23 is guilty of:

- 24 (1) a misdemeanor; or
25 (2) a fourth degree felony if the person has

underscored material = new
[bracketed material] = delete

1 previously been convicted of the offense or of an offense
2 pursuant to the laws of another state or of the United States
3 that would have been an offense pursuant to this section if
4 committed in this state.

5 F. A person who violates the provisions of this
6 section by threatening to inflict injury or physical harm to
7 the person or property of another by an act of terrorism as
8 defined in Section 30-20A-2 NMSA 1978, the use of a destructive
9 device as defined in Section 30-20A-2 NMSA 1978 or the use of a
10 weapon of mass destruction as defined in Section 30-20A-2 NMSA
11 1978 is guilty of:

12 (1) a third degree felony; or

13 (2) a second degree felony if the person has
14 previously been convicted of the offense or of an offense
15 pursuant to the laws of another state or of the United States
16 that would have been an offense pursuant to this section if
17 committed in this state.

18 G. Prosecution pursuant to this section shall not
19 prevent prosecution pursuant to any other provision of law when
20 the conduct also constitutes a violation of that other
21 provision."

22 Section 3. Section 30-20A-1 NMSA 1978 (being Laws 1990,
23 Chapter 66, Section 1) is amended to read:

24 "30-20A-1. SHORT TITLE. -- [~~This act~~] Chapter 30, Article
25 20A NMSA 1978 may be cited as the "Antiterrorism Act". "

. 145574. 1

underscored material = new
[bracketed material] = delete

1 Section 4. Section 30-20A-2 NMSA 1978 (being Laws 1990,
2 Chapter 66, Section 2) is amended to read:

3 "30-20A-2. DEFINITIONS. -- As used in the Antiterrorism
4 Act:

5 A. "act of terrorism" means an act of violence that
6 is or may reasonably be expected to be dangerous to human life
7 or to cause property damage in excess of one hundred thousand
8 dollars (\$100,000) and that is intended to intimidate or coerce
9 a civilian population or influence the policy or conduct of a
10 unit of government;

11 [A-] B. "civil disorder" means any planned act of
12 violence by an assemblage of two or more persons with the
13 intent to cause damage or injury to another individual or his
14 property;

15 [B-] C. "destructive device" means:

- 16 (1) any explosive, incendiary or poison gas:
17 (a) bomb;
18 (b) grenade;
19 (c) rocket having a propellant charge of
20 more than four ounces;
21 (d) missile having an explosive or
22 incendiary charge of more than [~~one-quarter~~] one-fourth ounce;
23 (e) mine; or
24 (f) similar device;
25 (2) any type of weapon that can expel or may

. 145574. 1

underscored material = new
[bracketed material] = del ete

1 be readily converted to expel a projectile by the action of an
2 explosive or other propellant, the barrel or barrels of which
3 have a bore of more than six-tenths inch in diameter, except a
4 shotgun, shotgun shell or muzzle loading firearm that is
5 generally recognized as particularly suitable for sporting
6 purposes; or

7 (3) any part or combination of parts either
8 designed or intended for use in converting or assembling any
9 device described in Paragraphs (1) and (2) of this subsection.

10 The term "destructive device" ~~[shall]~~ does not include any
11 device that is neither designed nor redesigned for use as a
12 weapon unless the device is readily convertible for use as a
13 weapon;

14 ~~[C.]~~ D. "firearm" means any weapon that can expel
15 or is designed to or may readily be converted to expel a
16 projectile by the action of an explosion, the frame or receiver
17 of any such weapon, any firearm muffler or firearm silencer.

18 "Firearm" includes any handgun, rifle or shotgun; ~~[and~~

19 ~~D.]~~ E. "law enforcement officer" means any employee
20 of a police or public safety department administered by the
21 state or any political subdivision of the state where the
22 employee is responsible for the prevention and detection of
23 crime and the enforcement of the penal, traffic or highway laws
24 of this state. "Law enforcement officer" includes any member
25 of the New Mexico national guard; any peace officer of the

. 145574. 1

underscored material = new
[bracketed material] = delete

1 United States, any state, any political subdivision of a state
2 or the district of Columbia; any member of the New Mexico
3 mounted patrol or the national guard, as defined in 10 U. S. C.
4 Sec. 101(9); any member of the organized militia of any state
5 or territory of the United States, the commonwealth of Puerto
6 Rico or the district of Columbia not included within the
7 definition of national guard; and any member of the armed
8 forces of the United States. "Law enforcement officer" also
9 means any person or entity acting as a contractor for any other
10 law enforcement officer, police or public safety department
11 described in this section; and

12 F. "weapon of mass destruction" means a device
13 capable of releasing a radioactive, biological, toxic or
14 chemical agent in a form or by a means that will or that may
15 reasonably be expected to produce death, bodily harm or illness
16 in a civilian population. "

17 Section 5. Section 30-20A-3 NMSA 1978 (being Laws 1990,
18 Chapter 66, Section 3) is amended to read:

19 "30-20A-3. UNLAWFUL ACTS--PENALTY.--

20 A. ~~[Any]~~ A person who teaches or demonstrates the
21 use, application or making of ~~[any]~~ a knife, box cutter or
22 similar device or a firearm, destructive device, weapon of mass
23 destruction or technique capable of causing injury or death to
24 any person with the intent that the knowledge or skill taught,
25 demonstrated or gained be ~~[unlawfully]~~ used in furtherance of a

. 145574. 1

underscored material = new
[bracketed material] = delete

1 civil disorder, an act of terrorism or the use or threatened
2 use of a weapon of mass destruction is guilty of a [~~fourth~~]
3 ~~third~~ degree felony [~~and shall be sentenced under the~~
4 ~~provisions of the Criminal Sentencing Act to imprisonment for a~~
5 ~~definite term of eighteen months or, in the discretion of the~~
6 ~~sentencing court, to a fine of not more than five thousand~~
7 ~~dollars (\$5,000) or both].~~

8 B. [~~Any~~] A person who trains, practices or receives
9 instruction in the use of [any] a knife, box cutter or similar
10 device or a firearm, destructive device, weapon of mass
11 destruction or technique capable of causing injury or death to
12 any person with the intent that the knowledge or skill taught,
13 demonstrated or gained be [~~unlawfully~~] used in furtherance of a
14 civil disorder, an act of terrorism or the use or threatened
15 use of a weapon of mass destruction is guilty of a [~~fourth~~]
16 ~~third~~ degree felony [~~and shall be sentenced under the~~
17 ~~provisions of the Criminal Sentencing Act to imprisonment for a~~
18 ~~definite term of eighteen months or, in the discretion of the~~
19 ~~sentencing court, to a fine of not more than five thousand~~
20 ~~dollars (\$5,000) or both].~~

21 C. A person who commits an act of terrorism or uses
22 a weapon of mass destruction is guilty of a first degree
23 felony.

24 D. Prosecution pursuant to this section shall not
25 prevent prosecution pursuant to any other provision of law when

1 the conduct also constitutes a violation of that other
2 provision. "

3 Section 6. EMERGENCY.--It is necessary for the public
4 peace, health and safety that this act take effect immediately.

5 - 11 -
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

underscored material = new
[bracketed material] = delete